

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

Case No. A-5574

PETITION OF LOIS EHLE  
(Hearing held April 25, 2001)

OPINION OF THE BOARD  
(Effective date of Opinion, June 14, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-.323(a). The petitioner proposes to construct a new single-family dwelling that requires a 1.9 foot variance as it is within 23.1 foot from the front/side street lot line (River Road). The required setback is twenty-five (25) feet.

The petitioner requested and received a variance for the reconstruction of the existing single-family dwelling at a public hearing held before the Board of Appeals on February 28, 2001. The petitioner testified that during a routine site construction inspection by the Department of Permitting Services (DPS), DPS determined that the proposed construction would require an additional variance.

The subject property is Lot 11, West Friendship Subdivision, located at 5301 Willard Avenue, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 00435385).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner plans to demolish and to reconstruct a new single-family residence at the same location as the original residence.
2. The petitioner testified that the residence was being rebuilt because the existing house was not structurally sound. The petitioner testified that the footprint of the house would not change and that the architectural design would be identical to the original residence.
3. The petitioner testified that the need for an additional variance was not determined until construction had begun on the new house and that the new house now requires a greater setback than had been required for the original structure.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the reconstruction of a single-family dwelling at the same location and within the same footprint an exceptional circumstance. The Board further finds that required setbacks have increase over time and that the petitioner is now required to meet a greater setback than would have been required for the original structure.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the reconstruction of new single-family dwelling is the minimum reasonably necessary to overcome the property's exceptional circumstances.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction continues the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no correspondence or testimony in opposition to the variance request and the Board finds that the proposed construction would not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 1.9 feet from the required 23.1 foot front/side street lot line setback is granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 21, and 23.1 through 23.4.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Board member Mindy Pittell Hurwitz was necessarily absent and did not participate in this Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 14th day of June, 2000.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.